IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12596 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GOVANBHAI BAHADURBHAI PATEL

Versus

DAJIBHAI KHUSHALBHAI PATEL

Appearance:

1. Special Civil Application No. 12596 of 2002

MR JB PARDIWALA for Petitioner No. 1-4

MR JV JAPEE for Respondent No. 1-4

Ms.Pandit, AGP for Respondent No. 5-6

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 29/04/2003

ORAL JUDGEMENT

Rule. Mr.Japee appears for respondent Nos 1 to 4

and Ms.Pandit, Ld.AGP appears for respondent No.5 & 6 and waive service of rule respectively. With the consent of learned counsel for parties matter is finally heard today.

2. The relevant facts of the petition are that the petitioners preferred revision before the Dy.Collector against the decision of the Mamalatdar dated 29.3.01. However, the said revision was preferred after a period of about 11 months. The ground contended by the petitioners before the Dy.Collector was that one of the applicants, namely Champakbhai Bhuvanbhai had serious sickness of cancer and expired on 8.1.2002 and thereafter immediately revision was preferred on 26.4.02 and therefore it was requested that since said Champakbhai Bhuvanbhai was bedridden for the last six months the delay be condoned. The learned Dy.Collector found that Champakbhai Bhuvanbhai was one of the applicants and there were other persons also who could have preferred revision and hence the delay was not condoned and the revision is dismissed as per the order dated 9.7.02 which is challenged in this petition by the petitioner.

3. Considering the facts and circumstances of the case, in my view that the law is settled on the point regarding consideration of the case for condonation of delay. It does appear that the ground shown for condonation of delay can be said to be sufficient. However, the Collector has taken the view that since there were also other applicants who could have preferred revision within stipulated time limit he has taken strict view of the matter and the delay is not condoned. Further, in my view, the Collector while considering the question of condonation of delay ought to have also considered that whether the delay could be condoned by awarding costs as compensation to the other side for the default on the part of the person who has caused delay. It appears that there is no discussion on the said aspect. But, even if the facts and circumstances of the case are considered, the Dy.Collector could have exercised discretion while condoning the delay by awarding suitable costs.

4. However, the matter has not ended before the Dy.Collector and has come to this court. Certainly the private respondents can not be made to suffer on account of delay caused by the petitioner. Mr.Pardiwala has submitted that the petitioner would be agreeable to pay reasonable costs which may be found proper by this court considering the facts and circumstances of the case. However, he submitted that there is good defence on the

part of the petitioner in the revision if it is heard on merits. In my view, it is not necessary for this court to examine the merits of the matter at this stage because the learned Dy.Collector has also not examined the matter on merits and has dismissed the revision on the ground of delay and therefore when the delay could have been condoned by awarding suitable costs and since same is not done by the Collector while exercising revisional powers it can be said that the Collector has committed error to that extent apparent on the face of record and hence the order of the Collector deserves to be quashed by imposing suitable costs on the petitioner so as to compensate the private respondents.

5. In view of the aforesaid discussion, the impugned order dated 9.7.2002 passed by the Dy.Collector in Revision Application No.809/02 copy whereof is produced at Annexure "C" is quashed and set aside on condition that the petitioner shall deposit Rs.5,000/- with the Dy.Collector towards the costs of the respondent No.1 to 4 within a period of one month from today. It is clarified that after depositing Rs.5000/- with the Dy.Collector the petitioner will be at liberty to move the Dy.Collector for hearing of revision application on merits and if such application is made the Dy.Collector shall first allow the withdrawal of costs of Rs.5,000/by respondent Nos 1 to 4 herein and thereafter take up the revision application and after hearing both the sides decide the same in accordance with law as early as possible preferably within three months from the date of receipt of writ of this court. It is directed that until the Deputy Collector decides the revision application on merits as directed hereinabove, both parties shall maintain statusquo but if the amount of costs is not deposited within one month from today such interim stay of statusquo shall automatically stand vacated.

6. Petition is allowed accordingly. Rule is made absolutely to the aforesaid extent. DS permitted.

29.4.03 (JAYANT PATEL,J)